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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/403,689	10/22/1999	BERND KOWALSKI	2345/97	7576
26646	7590	08/17/2004	EXAMINER	
KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004			STULBERGER, CAS P	
			ART UNIT	PAPER NUMBER
			2132	

DATE MAILED: 08/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/403,689

Applicant(s)

KOWALSKI ET AL.

Examiner

Cas Stulberger

Art Unit

2132

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 May 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 04 May 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 8-18.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s).
10. ☐ Other: \_\_\_\_\_

**Best Available Copy**

  
GILBERTO BARRON  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100

Continuation of 5. does NOT place the application in condition for allowance because: Applicant argues that "the 'final' nature of this Office Action is improper" since "Applicants did not amend the claims, there are no new grounds of rejections - and instead, there are new rejections for different unamended claims." In the previous amendment Applicant cancelled claims 1-7 and added claims 8-18. This however constitutes an amendment. The art used to reject Applicant's claims 8-18 was not changed from the art used to reject applicants claims 1-7; therefore, the action was made final.

Applicant argues that neither Shaw nor Matyas disclose "communicating, from a sending point to a receiving point, the secret key and the variable parameter via at least one of a secure channel separate from a message-transmission path and the message-transmission path, the message-transmission path being secure via an asymmetrical cipher." Matyas discloses "that both the data originator and the intended recipient must first share a common, secret key. This requires the secure distribution of at least one DEA key for each secure "channel" between originator and recipient" (Matyas: column 3, line 1-5). This meets the limitation of "a secure channel separate from a message-transmission path." Matyas also discloses "employing a public key algorithm and the DEA may be effective in solving the initial KEK distribution problem" (Matyas: column 3, lines 12-14).